IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLIATION NO.220 OF 1999

Mr. Isaac Talkar
Dy. General Manager,
Bank of Baroda, Esperanaca Bldg.
S.B. Singh Road, Colaba, Mumbai. Applicant
(Orig.Accused)

V/s.

1.State of Maharashtra

2.Shri. D.S. Rai
Municipal Prosecutor and Advocate
on behalf of the Mumbai Municipal
Corporation. Respondents/
(No.2 Orig.Compl.)

Shri.P.K. Hushing for Applicant.
Shri. P.S. Hingorani APP for State.

CORAM : V.M. KANADE, J.
DATED : 09/03/2007

ORAL JUDGMENT:-

1. Heard learned counsel appearing on behalf of the Applicant and learned APP for State.

2. Applicant is challenging the Judgment and Order passed by the Sessions Court which had dismissed appeal filed by the

Applicant and had confirmed order passed by the Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai.

3. Brief facts which are relevant for deciding this application are as under:-

The complaint was filed against the Bank of Baroda U/s.381 r/w 471 of the Bombay Municipal Act. Prosecution case is that Corporation had received complaint from PW-2 Mr. Lobo in respect of nuisance of exhaust fans and air conditioners fixed by the Bank of Baroda. The Trial Court examined the evidence on record and directed the Applicant to pay fine of Rs.500/- and in default to suffer simple imprisonment for 15 days. Against this order, Bank of Baroda filed appeal which came up before 1st Additional Principal Judge and Additional Sessions Judge, Bombay vide appeal No.38/1997. This appeal was also dismissed. The Applicant had already paid the fine of Rs.500/-.

4. Learned counsel appearing on behalf of the Applicant submits that only allegation against the Applicant is that he had installed air conditioners in the premises and exhaust fan in toilet. He submitted that both the courts below had accepted that the exhaust

fans have been installed in many toilets and therefore, there was no question of nuisance being caused as a result of installation of exhaust fans. He further submitted that both the Courts below erred in coming to the conclusion that nuisance was caused by the air conditioners which were installed. He further submitted that air conditions were also necessary for modern life. Seven air conditioners were installed primarily because there were many computers in that room and therefore, there was more no other reason but to install air conditioners. He submitted that out of seven air conditioners, five air conditioners were removed by the Bank though they were removed after the statutory period of seven days. He has invited my attention to the order passed by both the courts below.

5. It is not possible to accept the submissions led by learned counsel for the Applicant. There are concurrent findings recorded by both the courts below. There is no reason to interfere with the said Judgment and Order of lower courts while exercising revisional jurisdiction U/s.401 of Cr.P.C.

6. Learned counsel for the Applicant submitted that order of

payment of fine would remain as stigma on the Applicant through out his life. He submitted that he was working as Deputy General Manager and that air conditioners were installed at the instance of Head Office of Bank of India. Therefore, there is no reason to order of payment of fine so far as the Applicant is concerned. This apprehension of learned counsel for the Applicant is unfounded as it is obvious from the catena of proceedings which are taken out by the complainant that main grievance was against Bank of Baroda and it cannot be held by any stretch of imagination that the Deputy General Manager i.e. the Applicant herein was responsible for the installation of air conditioners. Fine, therefore, is imposed on the Bank and not on the individual. With this clarification criminal revision application is rejected.

V.M. KANADE J.